

BOMBAY ACT No. III of 1876.

(The assent of the Governor General of India to this Act was first published by the Governor of Bombay on the 22nd February, 1877.)

An Act to consolidate and amend the law relating to the powers and procedure of Mámlatdárs' Courts.

WHEREAS it is expedient to consolidate and amend the law relating to the powers and procedure of Mámlatdárs' Courts; It is hereby enacted as follows:—

1. This Act may be called the Mámlatdárs' Courts Act, 1876.

Short title.

It extends to the whole of the Presidency of Bombay, except the City of Bombay and Aden.

Extent.

2. Clause 2, section 1, of Act XVI of 1838 [a], and Bombay Act V of 1864, are repealed.

Repeal of Acts.

All references made in any Act passed by the Governor of Bombay in Council or in any Act of the Governor General in Council passed prior to the coming into operation of the Indian Councils' Act, 1861 [b], to the said portion of Act XVI of 1838 [a], or to Bombay Act V of 1864, shall be read as if made to the corresponding portion of this Act.

24 & 25 Vict.,
c. 67.

3. In this Act, unless there be something repugnant in the subject or context—

Interpretation-clause.

(1) the word "Mámlatdár" shall include any Revenue-officer ordinarily exercising the powers of a Mámlatdár and any other person who may be specially authorized by the Governor in Council to exercise the powers of a Mámlatdár under this Act [c]:

(2) the words "plaintiff" and "defendant" shall include a pleader duly appointed to act on behalf of either, and the recognized agent of a plaintiff or defendant as defined in section 37 of the Code of Civil Procedure [d].

XIV of 1882.

4. Every Mámlatdár shall preside over a Court, which shall be called a Mámlatdár's Court, and which shall have power within such territorial limits as may from time to time be fixed by the Governor in Council to give

Powers of
Mámlatdárs'
Courts.

[a] Printed in Vol. I of this Code, p. 54.

[b] Printed in the Collection of Statutes relating to India, Vol. II, Ed. 1881, p. 695.

[c] Portion repealed by Act XVI of 1895 is omitted.

[d] The reference to s. 17 of Act VIII of 1869 is altered in accordance with Act XIV of 1882, s. 3. (For Act XIV of 1882 see the revised edition, as modified up to 1st July, 1888, published by the Legislative Department.)

(Sec. 4.)

1 immediate possession of lands, premises, trees, crops or fisheries, or of any profits of the same, or to restore the use of water from wells, tanks, canals or water-courses to any person who shall have been dispossessed or deprived thereof otherwise than by due course of law, or who shall have become entitled to the possession or restoration thereof by reason of the determination of any tenancy, or other right of any other person in respect thereof.

The said Court shall also have power within the said limits, when any person is disturbed or obstructed, or when an attempt has been made to disturb or obstruct any person, in the possession of any lands, premises, crops, trees or fisheries, or in the use of water from any well, tank, canal or water-course, or of the use of roads or customary ways to fields, to issue an injunction to the person causing, or who has attempted to cause, such disturbance or obstruction, requiring him to refrain from causing or attempting to cause any such further disturbance or obstruction.

Suits to be
filed within
six months.

But no suit shall be entertained by a Mámlatdár's Court unless it be brought within six months from the date on which the cause of action arose.

Cause of
action.

The cause of action shall be deemed to have arisen on the date on which the dispossession, deprivation, determination of tenancy or other right occurred; or on which the disturbance or obstruction, or the attempted disturbance or obstruction, first commenced.

Illustration I.

A lets B his field to cultivate for a specific period of one or more years. B refuses to resign possession after the expiration of that period. A can sue for possession in the Mámlatdár's Court at any time within six months from the date of the expiration of the said period.

Illustration II.

B is a yearly tenant of A, who gives him notice to vacate, as he is bound to do under Bombay Act I of 1865, section 43, clause 2 [“], at least six months before the commencement of the next cultivating season. At the commencement of the next cultivating season B refuses to vacate. A can sue B in the Mámlatdár's Court at any time within six months from the commencement of the next cultivating season.

Illustration III.

A allows B the use of water from his well, or from his water-course, for a specific period, at the expiration of which B continues to take water from the well or water-course without A's consent. A may sue B in the Mámlatdár's Court at any time within six months from the expiration of the said period to obtain an injunction to stop B from taking the water.

[“] Bom. Act I of 1865, s. 43, cl. 2, is repealed (locally) by Bom. Act V of 1879, printed *infra*.

Illustration IV.

A and *B* hold lands adjacent to a पाट, or फांस, or similar artificial water-course, which has hitherto been exclusively used by *B*. *A* draws water therefrom. *B* may sue in the Mámlatdár's Court at any time within six months from the date on which *A* commences to take the water, for an injunction to prevent *A* from so doing.

5. All suits under this Act shall be commenced by a plaint, which shall be presented to the Mámlatdár in open Court by the plaintiff, and which shall contain the following particulars:—

Suits commenced by plaint. Contents.

- (1) the name, religion, caste, profession and place of abode of the plaintiff:
- (2) the name, religion, caste, profession and place of abode of the defendant:
- (3) the nature and situation of the property of which, or of the profits of which, possession or use is sought, or the nature of the injunction to be granted, as the case may be:
- (4) the date on which the cause of action arose:
- (5) the circumstances out of which the cause of action arose:
- (6) a list of the plaintiff's documents, if any, or of his witnesses, and what evidence is required from each witness, and whether such witnesses are to be summoned to attend, or whether the plaintiff will produce them on the day and at the place to be appointed according to section 11 of this Act.

6. When the plaint is presented, the Mámlatdár shall require the plaintiff to subscribe and verify the plaint in his presence, in open Court, in the manner following, or to the like effect:—

Plaint to be subscribed and verified.

"I, *A. B.*, the plaintiff, do declare that what is stated in this plaint is true to the best of my information and belief."

7. The Mámlatdár shall endorse the plaint to the effect that it was duly subscribed and verified. In case the plaintiff cannot write, the verification may be written for him in open Court, and the Mámlatdár shall, in such case, record that the verification was made in his presence at the request of the plaintiff, who affixed his mark to his name in token of the authenticity of the verification.

Endorsement by Mámlatdár. Procedure in case plaintiff cannot write.

8. If the plaint do not contain the several particulars hereinbefore required to be specified therein, or if it contain particulars other than those specified, whether relevant to the plaint or not, or if the statement of particulars be unnecessarily prolix, the Mámlatdár may order the plaint to be amended within three days from the date of such order.

Amendment of plaint.

(Secs. 9-14.)

Rejection of
plaint.

9. If the plaintiff decline to subscribe or verify the plaint as hereinbefore required, or to amend the same as directed by the Mámlatdár, or if it appear upon the face of the plaint, or after questioning the plaintiff, that the cause of action arose more than six months before the plaint was presented, the Mámlatdár shall reject the plaint.

Return of
plaint.

10. If it appear to the Mámlatdár that the subject of the plaint is not within his jurisdiction, he shall return the plaint in order to its being presented in the proper Court.

Procedure
when plaint
admissible.

11. If a plaint is admissible, the Mámlatdár shall receive and file it. He shall then appoint a convenient day and place for the trial of the case. The plaintiff shall be required to appear with his documents and witnesses on the day and at the place appointed, of which ten days' notice in the form of Schedule A shall be issued at the plaintiff's expense to the defendant.

The date to be fixed for the trial shall not be earlier, except by consent of both parties, than ten days, nor, except for unavoidable reasons, later than fifteen days, from the day on which the notice is issued.

Attendance of
witnesses.

12. If either party require his witnesses to be summoned to appear on the day and at the place appointed, the Mámlatdár shall issue summonses for that purpose. The payment of the cost incurred in thus procuring the attendance of witnesses shall be regulated in accordance with the rules that may from time to time be made by the High Court in regard to the payment of witnesses.

If plaintiff
makes default,
plaint to be
rejected with
costs.
If defendant
does not
appear, case
to be heard
ex parte.

13. If the plaintiff fails to attend with his proofs, or omits to adopt measures to procure the attendance of his witnesses on the day and at the place appointed, the Mámlatdár shall reject the plaint with costs.

If the defendant fails to attend, and the Mámlatdár is satisfied from the evidence before him that the notice has been duly served on the defendant, and in sufficient time to enable the defendant to appear and answer on the day fixed in the notice, he shall proceed to hear the plaint *ex parte* :

But case may
be re-heard on
sufficient
cause being
shown.

Provided that, if either party satisfy the Mámlatdár at any time within fifteen days from the date of the plaint being thus rejected, or of such *ex parte* decision, that he was prevented by some unavoidable circumstance from being present, or from procuring the attendance of his witnesses, it shall be lawful for the Mámlatdár to re-hear the case, a notice in the form of Schedule B being issued, at the applicant's expense, to the opposite party.

When pro-
ceedings may
be adjourned.

14. If any witnesses who have been duly summoned fail to attend on the day and at the place appointed, the Mámlatdár may, if he consider there is sufficient reason after taking the evidence of those that are present, adjourn

(Sec. 15.)

the hearing of the suit from time to time till the attendance of the witnesses can be enforced.

The provisions of section 13 shall apply on any date to which the proceedings may be adjourned under this section, as if such date were the day originally fixed for the hearing.

15. On the day appointed the Mámlatdár shall proceed to hear all the evidence that is then and there before him, and to try the following issues, namely :—

Points to be decided by Mámlatdár at hearing.

(a) if the plaintiff avers that he has been unlawfully dispossessed of any property or deprived of any use :—

(1) whether the plaintiff or any person on his behalf or through whom he claims was in possession or enjoyment of the property or use claimed up to any time within six months before the suit was filed ;

(2) whether the defendant is in possession at the time of the suit, and if so whether he obtained possession otherwise than by due course of law :

(b) if the plaintiff avers that he is entitled to possession of any property or restoration of any use by reason of the determination of any tenure or other right of the defendant in respect thereof :—

(1) whether the defendant is in possession of the property, or in the enjoyment of the use by a right derived from the plaintiff or from any person through whom he claims ;

(2) whether such right has determined at any time within six months before the suit was filed :

(c) if the plaintiff avers that he is still in possession of the property, or in the enjoyment of the use, but that the defendant disturbs or obstructs, or has attempted to disturb or obstruct, him in his possession or use :—

(1) whether the plaintiff or any person in his behalf is actually in possession or enjoyment of the property or use claimed :

(2) whether the defendant is disturbing or obstructing, or has attempted to disturb or obstruct, him in such possession or enjoyment :

(3) whether such disturbance or obstruction, or such attempted disturbance or obstruction, first commenced within six months before the suit was filed.

If the Mámlatdár's finding upon these issues be in favour of the plaintiff, he shall make such order as the circumstances of the case shall appear to him

Mámlatdár's award, if in favour of plaintiff.

to require : provided that the same be not in excess of the powers vested in him by section 4 [a].

Indefendant's
favour.
Costs to be
awarded.

If his finding be in favour of the defendant, he shall reject the plaint.

In either case the costs of the suit, including the costs of execution, shall follow the decree.

Mámlatdár's
order to be
endorsed on
plaint.

16. Every order of the Mámlatdár, whether for rejecting or returning a plaint, or whether for allowing or disallowing the claim, shall be endorsed by the Mámlatdár on the plaint, who shall also place on record his reasons for the same.

Mámlatdár's
award how
executed.

17. If the Mámlatdár's decision be for awarding possession or restoring a use, he shall issue an order to the village-officers to give effect thereto.

If it be for granting an injunction, he shall cause the same to be prepared in the form of Schedule C, and shall deliver or tender the same then and there to the defendant, if he be present, and if he be not present shall send it to the village-officers to be served upon him.

When the Mámlatdár awards costs, such costs, together with the costs of execution, shall be recovered from the party in person, and in the event of non-payment by the attachment and sale of his property.

Possession to
be given with-
out prejudice
to rights of
parties.

18. The party to whom the Mámlatdár shall give immediate possession; or restore a use, or in whose favour an injunction has been granted, shall continue in possession or use until ousted by a decree or order of a Civil Court:

Provided that nothing in this section shall prevent the party against whom the Mámlatdár's decision is passed from recovering by a suit in the Civil Court mesne profits for the time he may be kept out of possession of any property, or out of enjoyment of any use :

Provided further that in any subsequent suit or other proceeding in the ordinary Civil Courts between the same parties, or other persons claiming under them, the Mámlatdár's decision respecting the possession of any property, or the enjoyment of any use, shall not be held to be conclusive.

Bar of appeal.

19. There shall be no appeal from any order passed by a Mámlatdár under this Act.

Punishment
for false veri-
fication of
plaint.

20. If any plaint verified under this Act shall contain any statement which the plaintiff shall know or believe to be false, or shall not know or believe to be true, such plaintiff shall be subject to punishment according to the provision of any law for the time being in force for the punishment of persons intentionally giving or fabricating false evidence.

[a] Words repealed by Bom. Act 111 of 1886 are omitted

(Sec. 21.—Schedule A.—Form of Notice to be issued to the Defendant under section 11.)

21. Any suit instituted by any person bound by any order made under this Act, or by any one claiming under such person, shall be dismissed; although limitation has not been set up as a defence, unless it has been instituted within three years from the date of the final order in the case. Limitation of suits.

SCHEDULE A.

FORM OF NOTICE TO BE ISSUED TO THE DEFENDANT UNDER SECTION 11.

Seal of the
Court.

No. OF SUIT.

In the Court of the Mámlatdár of

Plaintiff.

Defendant.

To the defendant—(name, religion, caste, profession and address).

WHEREAS (here enter the name, religion, caste, profession and address of the plaintiff) has instituted a suit in this Court against you (here state the particulars of the plaint), you are hereby summoned to appear in this Court at the village of _____ in person or by duly authorized agent on the _____ day of _____ at _____ o'clock, to answer the abovenamed plaintiff; and, as the plaint will be finally disposed of on that day, you must adopt measures to produce your documents and procure the attendance of your witnesses at the hour and place above appointed; and you are hereby required to take notice that, in default of such appearance at the before-mentioned time and place, the suit will be heard and determined in the absence of yourself or your agent.

(Signed)

Mámlatdár.

Note.—If you require your witnesses to be summoned by the Court, you should make an application to that effect to the Court without delay, so as to allow of the service of the summonses a reasonable time before the within-mentioned date.

(Schedule B.—Form of Notice to be issued under Section 13.)

SCHEDULE B.

FORM OF NOTICE TO BE ISSUED UNDER SECTION 13.



No. OF SUIT.

In the Court of the Mámlatdár of

Plaintiff.

Defendant.

To plaintiff (or defendant, *as the case may be*), inhabitant of

WHEREAS, in the suit above specified, instituted in this Court by the said plaintiff, the Court ordered on the _____ day of _____ last that _____, and the said plaintiff (or defendant, *as the case may be*) has, under date the _____ day of _____, applied to this Court to re-hear the case, and the Court has granted his said application.

This is to give you notice that the said suit will be re-heard and determined on the _____ day of _____ at _____ o'clock, at the village of _____, at which time and place you must take measures to produce your documents and procure the attendance of your witnesses, and you are hereby required to take notice that, in default of your appearance personally or by agent at the abovementioned time and place, the suit will be re-heard and determined in your absence.

Dated this _____ day of _____ 187 .

(Signed)

Mámlatdár.

Note.—If you require your witnesses to be summoned by the Court, you should make an application to that effect to the Court without delay, so as to allow of the service of the summonses a reasonable time before the within-mentioned date.

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(Schedule C.—Form of Injunction to be issued under Section 17.)

1877: Bom. Act I.]

Vaccination (Bombay City).

SCHEDULE C.

FORM OF INJUNCTION TO BE ISSUED UNDER SECTION 17.



No. of SUIT.

In the Court of the Mámlatdár of

Plaintiff.

Defendant.

To defendant.

WHEREAS in the suit above specified the Court has this day found that you are disturbing or obstructing (or that you did attempt on or about the to disturb or obstruct) the said plaintiff in his possession of the under-mentioned property (or enjoyment of the under-mentioned use of water or use of roads, or otherwise as the case may be).

You are hereby prohibited from making any further attempt to disturb or obstruct the said plaintiff in his possession of the said property (or enjoyment of the said use) otherwise than in execution of the decree of a Civil Court.

Dated this day of 187 .

, (Signed)

Mámlatdár.

THE BOMBAY VACCINATION ACT, 1877.

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Proviso.

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PROSECUTIONS AND OFFENCES.

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SCHEDULE E.

BOMBAY ACT No. I, of 1877.

(The assent of the Governor General of India to this Act was given by the Governor of Bombay on the 17th May, 1877.)

An Act to prohibit the practice of inoculation, and to make the vaccination of children in the City of Bombay compulsory.

WHEREAS it is expedient to prohibit the practice of inoculation, and to make the vaccination of children in the City of Bombay compulsory; It is enacted as follows:—

PRELIMINARY.

1. This Act may be cited as the Bombay Vaccination Act, 1877.

It extends only to the City of Bombay.

It shall come into force on such day [a] as the Governor in Council directs by notification in the Bombay Government Gazette, and its operation may at any time be suspended by the Governor in Council by notification in the said Gazette.

2. In this Act, unless there be something repugnant in the subject or context,—

(1) "parent" includes the father and mother of a legitimate child and the mother of an illegitimate child:

[a] The 1st September, 1877—see Bombay Government Gazette, 1877, Pt. I, p. 53.

Short title.

Local extent.

Commencement.

Interpretation clause.